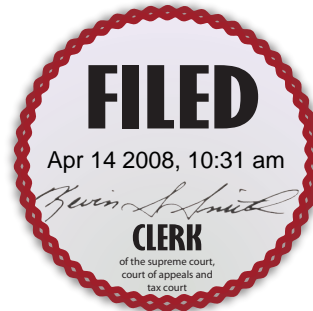


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



APPELLANT PRO SE:

MARK LANCE TYLER
Paris, Illinois

**IN THE
COURT OF APPEALS OF INDIANA**

MARK L. TYLER,

Appellant-Respondent,

vs.

RENEE A. HIGHSMITH,

Petitioner.

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No. 84A04-0711-CV-600

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Christopher A. Newton, Judge
Cause No. 84D04-0708-PO-8235

April 14, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

In this pro se appeal, Appellant-Respondent Mark L. Tyler challenges the trial court's order granting Petitioner Renee Highsmith's petition for a protective order. Upon appeal, Tyler claims that the evidence was insufficient to support the trial court's order and that the order was entered in violation of his due process rights to a fair hearing. We affirm.

FACTS AND PROCEDURAL HISTORY

Tyler and Highsmith have in the past been in a relationship, the nature of which is disputed. On approximately February 2, 2007, both Tyler and Highsmith filed petitions for protective orders against one another. The parties agreed to dismiss their petitions in consideration of a formalized Agreement, accepted by the trial court, which was in effect from March 15, 2007 to August 2, 2007. This Agreement provided that if either party was present in a public establishment such as a restaurant, store, or shop prior to the arrival of the other party, the subsequently-arriving party would voluntarily leave the establishment. The Agreement further provided that Tyler would not frequent the Apple Club or Tumbleweed Restaurant on odd-numbered calendar days, and Highsmith would not frequent them on even-numbered calendar days. In addition, the Agreement specified that a knowing violation of the Agreement by one party could be cause for the other party to seek a remedy by refileing a petition for a protective order.

On August 2, 2007, the date the Agreement expired, Tyler arrived at Tumbleweed where Highsmith was present with friends, and, according to Highsmith, sat down and glared. There is no dispute that Tyler arrived after Highsmith, or that he realized she was there. The next day, August 3, both parties were at Twiggy's, where Tyler allegedly

stared at Highsmith and her friends.¹ On August 4, Tyler arrived at the Apple Club in the Holiday Inn after Highsmith had arrived. There is no dispute that Highsmith was present when Tyler arrived at the Apple Club or that he realized she was there. Tyler communicated with Highsmith through email messages after these incidents. According to Highsmith, Tyler's actions caused her to feel scared and intimidated.

On August 14, 2007, Highsmith filed a petition for an ex parte protective order against Tyler, which the trial court granted. On September 26, 2007, the trial court held a hearing, after which it granted Highsmith a protective order against Tyler effective until September 26, 2009. On October 9, 2007, Tyler filed a motion to dismiss and a motion to reconsider, both of which the trial court denied. On October 22, Tyler filed a motion to correct errors, which the trial court also denied. On October 24, Tyler filed a second motion to correct errors and a motion for discovery, which the trial court also denied.

Tyler filed his notice of appeal on October 31, 2007. On November 15, 2007, the trial court held a supplemental hearing in which it ordered that Respondent's Exhibit A, which included, *inter alia*, documents and photographs relating to the above incidents, be included in the record. On November 26, 2007, Tyler filed a motion to correct errors and a motion to supplement the record. The trial court denied Tyler's motion to correct error.

On January 11, 2008, Tyler filed a motion to stay the orders of protection, which this court granted on February 4, 2008. On March 13, 2008, Tyler filed with this court a motion to confirm receipt of transcripts, a motion for verification of facts outside the record, and a motion to compel the trial court to remove certain allegedly active entries

¹ The parties dispute whether Highsmith or Tyler was the first to arrive.

relating to the protective orders, and on April 3, two additional motions for verification of facts outside the record, all of which we deny in companion orders. The merits of Tyler's appeal follow.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Tyler challenges the sufficiency of the evidence to support the protective order by arguing that he did not commit any act which constituted stalking. In making this argument, Tyler claims that it was Highsmith's conduct, not his own, which caused her to be in his presence. Tyler further challenges Highsmith's testimony that she fears him.

In reviewing the sufficiency of the evidence, we neither reweigh the evidence nor resolve questions of credibility. *Tons v. Bley*, 815 N.E.2d 508, 511 (Ind. Ct. App. 2004). We look only to the evidence of probative value and reasonable inferences that support the trial court's judgment. *Id.*

Under Indiana's Civil Protection Order Act, a court may issue a protective order upon a showing, by a preponderance of the evidence, of domestic violence. *Id.* at 510 (citing Ind. Code § 34-26-5-9(f)). Domestic violence under this Act includes "stalking" as defined in Indiana Code section 35-45-10-1. *See* Ind. Code § 31-9-2-42 (2007). Under Indiana Code section 35-45-10-1 (2007), "stalking" is defined as the following:

a knowing or an intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened.

Here, Highsmith's testimony established that Tyler frequented three establishments where Highsmith was present on approximately three successive days. Tyler does not dispute that on at least two of these occasions he entered the establishments after Highsmith did and was aware of her presence. Highsmith further indicated that her frequent encounters with and communications from Tyler caused her to feel fear. While under the terms of the Agreement, Tyler would have been entitled to be at Tumbleweed and the Apple Club on the even-numbered days of August 2 and 4, the Agreement had expired. To the extent Tyler argues that the parties' routines were still dictated by the Agreement, the Agreement also provided that a subsequently-arriving party was to leave an establishment if the other party was already present. Tyler does not dispute that he arrived at Tumbleweed and the Apple Club after Highsmith, or that he was fully aware she was there.

As the trial court observed, three days in a row after the Agreement terminated, Tyler was in the same place Highsmith was, which the trial court was entitled to conclude was not accidental on Tyler's part. Highsmith testified that these encounters caused her to feel fear and intimidation. The trial court was in a better position than we to evaluate the witnesses' credibility and conclude from the testimony and circumstances that Tyler was stalking Highsmith. *See Essany v. Bower*, 790 N.E.2d 148, 153 (Ind. Ct. App. 2003) (observing that the offense of "stalking" has a subjective component). Tyler's challenge to the sufficiency of the evidence is simply an invitation to reweigh the evidence, which we decline to do. We therefore reject Tyler's challenge to the protective orders on the basis that they are unsupported by sufficient evidence.

II. Due Process

Tyler contends that the trial court failed to allow him to testify, submit evidence, and cross-examine witnesses and that his due process rights to a fair hearing were therefore violated.

The fundamental requirement of due process is the opportunity to be heard “‘at a meaningful time and in a meaningful manner.’” *McKinney v. McKinney*, 820 N.E.2d 682, 688 (Ind. Ct. App. 2005) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976)). The nature of process due in a given situation turns on the balancing of three factors: (1) the private interests affected by the proceeding; (2) the risk of error created by the State’s chosen procedure; and (3) the countervailing governmental interest supporting use of the challenged procedure. *Id.* (citing *Mathews*, 424 U.S. at 335)). The balancing of these factors recognizes that due process is “‘flexible and calls for such procedural protections as the particular situation demands.’” *Id.* (quoting *Mathews*, 424 U.S. at 334).

The record reflects that, contrary to Tyler’s claim, he did testify and submit documents which the court considered. While Tyler did not offer his documents as exhibits at the protective order hearing, the court considered them and, in a supplemental hearing, made them part of the record as Exhibit A.² Although Tyler did not cross-examine Highsmith, he fails to argue under the above analysis how his private interest in personally cross-examining his own purported stalking victim, together with any risk of error, outweighed the government’s significant interest in promoting the stated goals of

² Exhibit A includes, among other documents, letters of recommendation and Tyler’s own detailed and illustrated reports of the incidents at issue, the reliability of which was never demonstrated.

the Civil Protection Order Act to protect victims and prevent future violence. *See* Ind. Code § 34-26-5-1 (2007)).

The judgment of the trial court is affirmed.

BARNES, J., and CRONE, J., concur.